IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO. 2517 OF 2006
IN
SUIT NO.1188 OF 2005

Anup Jagtar Singh & Ors. ...Plaintiffs
Vs.
Jagdish Kaur Julka & Ors. ...Defendants

Mr.Sanjay Udeshi, Adv. for Plaintiffs
Mr.Sanjay Jain Adv. i/b. L.J.Law for Defendants 1 to 3 in support of Notice of Motion

CORAM : SMT. ROSHAN DALVI, J.
DATE : 14TH NOVEMBER, 2006.

P.C.

1. The suit is filed for declaration that the Defendants are in illegal and unauthorised occupation of the suit premises which is flat No.6Kanwal House, 3rd Road, Khar, Mumbai 400 052, for recovery of the rent, mesne profits, appointment of Court Receiver and injunction against the transfer of the suit property.

2. The initial application for ad-interim reliefs came to be made on 9th November, 2004 in the Diwali vacation of that year. An ad-interim order of injunction restraining any transfer by the Defendants 1 to 3 (defendants for short) came to be passed.

3. The Defendants claim that the inherent jurisdiction of this Court is barred because, they claim tenancy in respect of the suit flat. The Defendants have not taken out any proceedings for determination of the

preliminary issue relating to the jurisdiction of this Court under provisions of Order 14 Rule 2 of the C.P.C., even since they were served with the papers in November, 2004.

4. The Defendant's Company sought to show some cause against this delay in para 3 of their affidavit in support of the Notice of Motion which shows Defendant No.1 suffering from jaundice for a period of 3 months and hospitalised for 20 days during April, 2005. It is not shown why no proceedings for determination of the jurisdiction of the Court is taken out after that long illness of 3 months.

5. The Notice of Motion for appointment of Court Receiver and injunction taken out by the Plaintiff was served upon the Defendants in January, 2006. No affidavit in reply came to be filed in that Notice of Motion. Consequently that Notice of Motion came to be disposed of by the order passed on 24th March, 2006 granting the prayer of the Plaintiffs after considering the ad-interim order of injunction dated 9th November, 2004. Though Receiver came to be appointed for the suit premises the Defendants continued to be the Agent of the Court Receiver. This required the Defendants to pay Royalty for continuing in possession of the suit premises in the face of the declaration sought in prayer clause (a) of the Plaint.

6. I am told that the Defendants took out an earlier Notice of Motion for the same relief which they withdrew. This Notice of Motion has been taken out as late as August, 2006. The Defendants have not primafacie shown how the inherent jurisdiction of this Court is barred.

7. It need hardly be mentioned, that the jurisdiction of the Court is to be decided upon the averments in the plaint and not upon the case of the Defendants. Nevertheless, it is the Defendants case that they are tenants. On my query the Advocate for the Defendants stated that such claim is made upon a rent receipt issued in 1997 to the Predecessor-in-title of the Defendants. The plaint claims that the predecessor in title was the employee of the Plaintiff. Exhibit-D to the plaint is the certificate showing how he is provided the suit premises free of charge, consequent upon his employment with the Plaintiff.

8. Hence, whilst the Plaintiff has primafacie shown the Defendants' predecessor in title to be a gratutous licensee in respect of the suit premises, the Defendants, in support of their claim of lack of jurisdiction has not shown even a solitary rent receipt of 1997 relied upon by them in support of their claim as tenants.

9. The Advocate for the Defendants on my query mentioned that no further rents were paid by the predecessor-in-title of the defendants or the Defendants

because though paid it was not accepted by the Plaintiffs. Such is the primafacie claim of the Defendants of the tenancy of the suit premises for which they have taken out this Notice of Motion, which is in terms in the nature of Appeal, on the premise that they were not heard in the Notice of Motion. In fact they had not filed any affidavit in reply to the Notice of Motion two months after service. They also had not taken out any application for determination of the preliminary issue before the Notice of Motion came up for hearing.

10. Upon the ad-interim order passed in this Notice of Motion, the Defendants were required to execute the Agency Agreement for payment of Royalty. The Ad-interim order is dated 3rd August, 2006. Though, more than six weeks have expired, the Agency Agreement has not been executed.

11. Absolutely no case to modify or amend the order of Injunction in the suit is made out. In fact the application completely lacks bonafide.

12. Notice of Motion is dismissed with costs fixed at Rs.1000/-. The Court Receiver shall continue to act upon the order dated 24th March, 2006. The Defendants shall execute the agency agreement forthwith.

(SMT. ROSHAN DALVI, J.)